

Steven E. Boehmer (#144817)
Carrie L. Mitchell (#221845)
McDOUGAL, LOVE, ECKIS,
SMITH, BOEHMER & FOLEY
460 North Magnolia Avenue
El Cajon, California 92020
(619) 440-4444/Fax (619) 440-4907

Attorneys for Defendants: CITY OF EL CAJON, GREG JOHNSON and JOHN BENNETT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BERNICE RAULLERSON,)
)
Plaintiff,)
)
v.)
)
CITY OF EL CAJON, GREG JOHNSON,)
JOHN BENNETT and DOES I through)
XX, inclusive,)
Defendants.)
_____)

Case No. 07 CV 2001 W (AJB)

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' 1) MOTION FOR A
MORE DEFINITE STATEMENT 2)
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM AND 3) MOTION
TO STRIKE IRRELEVANT,
IMPROPER AND IMMATERIAL
PORTIONS OF THE COMPLAINT**

Date: January 14, 2008
Time: 10:30 a.m.

NO ORAL ARGUMENT PURSUANT TO
LOCAL RULE: 7.1D1

Defendants, CITY OF EL CAJON, GREG JOHNSON and JOHN BENNETT,
respectfully submit the following reply to plaintiff's opposition to motion for more definite
statement, motion dismiss the complaint and motion to strike irrelevant, improper and immaterial
portions of the complaint:

Plaintiff must amend her pleadings to provide a more definite statement of her claims,
rather than attempting to clarify them in her opposition. Plaintiff claims she has alleged facts
which support each cause of action, but her complaint does not clearly set out which defendant is
responsible under which legal theory.

///

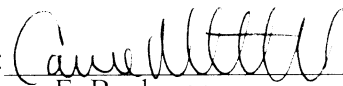
1 For example, plaintiff's causes of action based upon negligence, battery, and false arrest
2 against the City are clearly not proper. Plaintiff concedes that all government tort liability in
3 California must be based on statute. Plaintiff's state law causes of action to the extent they are
4 alleged directly against the City, must identify a statutory basis for liability in order to establish a
5 valid cause of action against the City. There is no statutory basis for negligence, assault and
6 battery or false arrest against the City. Therefore, these causes of action should be dismissed as
7 to the City.

8 To the extent the third cause of action for false arrest is alleged against the City under
9 federal law as alleged in the complaint, it should be dismissed because plaintiff has failed to
10 allege that the City maintained unconstitutional policies or customs or inadequate training led to
11 the alleged constitutional violation. However, plaintiff's opposition seems to indicate it is
12 brought under state law and she is seeking to hold the City liable on a theory of respondeat
13 superior. If this is the case, plaintiff should be required to clarify under what law this cause of
14 action is brought.

15 Plaintiff concedes that a prayer for punitive damages is improper against the City.
16 Plaintiff should be required to strike any prayer for punitive damages against the City in her
17 complaint.

18 DATED: January 8, 2008

**McDOUGAL, LOVE, ECKIS,
SMITH, BOEHMER & FOLEY**

19
20 By: 
21 Steven E. Boehmer
22 Carrie L. Mitchell
23 Attorneys for Defendants: CITY OF EL CAJON,
24 GREG JOHNSON and JOHN BENNETT
25
26
27
28

Rallerson v. City of El Cajon, et al.
Case No. 07 CV 2001 W (AJB)

PROOF OF SERVICE BY MAIL

I, the undersigned, declare that: I am over the age of 18 years and not a party to the case; I am employed in the County of San Diego, State of California, where the mailing occurs; and my business address is 460 N. Magnolia Avenue, El Cajon, California 92020.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following documents:

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANTS' 1) MOTION FOR A MORE DEFINITE STATEMENT 2) MOTION TO
DISMISS FOR FAILURE TO STATE A CLAIM AND 3) MOTION TO STRIKE
IRRELEVANT, IMPROPER AND IMMATERIAL PORTIONS OF THE COMPLAINT**

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Dan Bacal, Esq. Plaintiff
LAW OFFICES OF DAN BACAL
275 East Douglas Avenue, Suite 114
El Cajon, CA 92020
(619) 588-2064/Fax (619) 838-3133

I then sealed each envelope and, with postage thereon fully pre-paid, placed each for deposit in the United States Postal Service, this same day at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 8, 2008, at El Cajon, California.


Sherryl Burgio